**S.B. CIVIL WRIT PETITION NO. 3122/1997**

State of Rajasthan Vs. Akbar Ali & Ors.

DATE OF ORDER : 24.04.2006

**HON'BLE MR. GOVIND MATHUR, J.**

Mr. B.L. Tiwari, Dy. Govt. Advocate.

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By the order dated 6.1.2003 this Court pleased to issue notices to the legal representatives of respondent No.1 and 2. Notices so issued have not been served so far. As a matter of fact the notices have not been filed since 1.3.2006.

On examining the merits of the case I found that the controversy involved in this petition is no more res integra in view of the judgment of this Court dated 17.11.2005 in S.B. Civil Writ Petition No.163/1995 (State of Rajasthan & Anr. Vs. Ishaq Hussain & Anr. ).

By this petition for writ validity and propriety of the judgment dated 22.6.1996 passed by the Board of Revenue, Rajasthan is challenged. By the judgment impugned dated 22.6.1996 the Board of Revenue while accepting the revision petition preferred by the

respondent held therein that the document produced by the respondents for its registration before the Sub–Registrar, Udaipur is a release deed, and therefore, registration fee and stamp duty is required to be charged accordingly.

The respondents Akbar Ali and Mustak Ali were real brothers and they purchased a land in Village Devali, Distt. Udaipur. Sh. Mustak Ali relinquished his rights with regard to the land in question. The aforesaid instrument was treated as a deed for sale by the Sub–Registrar and therefore reference was made to the Collector (Stamps), Udaipur. The Collector (Stamps), Udaipur by the order dated 17.10.1995 accepted the reference and determined the stamp duty required to be paid by treating the document as a sale deed. The respondents preferred a revision petition under Section 56 of the Indian Stamps Act, 1899 before the Board of Revenue, Rajasthan, Ajmer giving challenge to the order dated 17.10.1995 passed by the Collector (Stamps), Udaipur.

This Court in the case of Ishaq Hussain (supra) held that by the release no transfer of interest or title can be made in favour of a person who does not possess pre–existing right in such property however, a release can always be made in favour of a person

having pre–existing right or interest in the property. By a release title cannot be transferred but is feeded.

In the present matter it is the position admitted that Akbar Ali and Mustak Ali were real brothers and the land in question was in their joint ownership. One brother out of them renounced his claim in favour of another brother who was already having pre–existing rights in the property, therefore, the document placed for registration before the Registrar is nothing but a release deed. The Board of Revenue, therefore, rightly accepted the revision petition by the judgment impugned.

Accordingly, I do not find any merit in this petition for writ. The writ petition is therefore dismissed.

**(GOVIND MATHUR),J.**

j.goyal